

IN THE SUPREME COURT OF THE STATE OF NEVADA

STUART POWELL; RICHARD WEIGEL;
AND FLOYD WALTON,

Appellants,

vs.

THE CITY OF WEST WENDOVER;
JANICE FOX, INDIVIDUALLY AND
AS CITY MANAGER; WALT SANDERS,
INDIVIDUALLY AND AS MAYOR; AND
CITY COUNCIL,

Respondents.

No. 37355

FILED

FEB 06 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

STUART POWELL; RICHARD WEIGEL;
AND FLOYD WALTON,

Appellants,

vs.

THE CITY OF WEST WENDOVER;
JANICE FOX, INDIVIDUALLY AND
AS CITY MANAGER; WALT SANDERS,
INDIVIDUALLY AND AS MAYOR; AND
CITY COUNCIL,

Respondents.

No. 37659

ORDER OF AFFIRMANCE

These are consolidated appeals from a district court order granting respondents' motion to dismiss for failure to bring the case to trial within five years of filing, pursuant to NRCP 41(e), and an order awarding costs to defendants. Appellants Stuart Powell, Richard Weigel, and Floyd Walton argue the district court erred by dismissing their case for failure to comply with NRCP 41(e) and awarding costs to the City of Wendover. Powell, Weigel, and Walton further argue NRCP 41(e) is unconstitutional. We disagree.


NRCP 41(e) requires the dismissal of a case not "brought to trial within five years after the plaintiff has filed his action, except where the parties have stipulated in writing that the time may be extended."

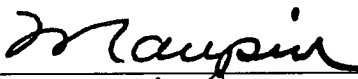
There are two narrow exceptions to this rule, neither of which applies to the instant case.¹ Because Powell, Weigel, and Walton failed in their obligations to bring their case to trial within five years, the district court properly dismissed the matter below for failure to prosecute.

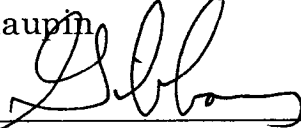
NRCP 41(e) is constitutionally valid. "As the promoter of its case, the plaintiff has the duty to carefully track the crucial procedural dates and to actively advance the case at all stages."²

Lastly, NRS 18.020 allows a prevailing party to recover costs. The district court properly awarded costs to the City because it was the prevailing party.

Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Andrew J. Puccinelli, District Judge
David D. Loreman
Georgeson Thompson & Angaran, Chtd.
McKissick Van Walraven & Harris
Elko County Clerk

¹See Baker v. Noback, 112 Nev. 1106, 1111-12, 922 P.2d 1201, 1204 (1996); Boren v. City of North Las Vegas, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982).

²Allyn v. McDonald, 117 Nev. ___, ___, 34 P.3d 584, 587 (2001).